IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 13-04-2006

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

AND

THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

WRIT PETITION No.25138 OF 2004

Nakkheerangopal @ R.R.Gopal ... Petitioner

-vs-

1.The State of Tamil Nadu,
represented by Home Secretary to Government,
Fort St.George,
Chennai.

2.Inspector of Police,
Sathyamangalam Police Station,
Erode,
Tamil Nadu.

3.Inspector of Police,
Special Investigation Cell,
CBCID Hqrs., Govt.Estates,
Chennai - 600 002.

4.The Dy.Superintendent of Police,
Special Investigation Cell,
CBCID,
Coimbatore (Camp at Chennai).

5.The Regional Director,
CBI,
Shastri Bhavan,
Chennai. .... Respondents

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Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus.

For petitioner : Mr.R.Shanmugasundaram,
Senior Counsel,
for Mr.P.T.Perumal.

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For respondents : Mr.A.L.Somayaji,
Additional Advocate General,
assisted by Mr.C.Manishankar,
Special Public Prosecutor.

O R D E R

M.KARPAGAVINAYAGAM,J.

This Writ Petition has been filed by Nakkheerangopal @ R.R.Gopal, Editor, Printer and Publisher, Nakkheeran Publications, Chennai, making the following prayer :

> "Wherefore, it is humbly prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other order in the nature of writ of mandamus directing the first respondent to transfer the investigation of POTA Crime No.5 of 2003 on the file of CBCID, Coimbatore, Camp at Chennai, to CBI and consequently direct the fifth respondent CBI to investigate (i) the circumstances under which a fresh case in Crime No.414 of 2001 was registered in the Sathyamangalam Police Station and confession of one Manickkam @ Kumar was obtained; thereafter, (ii) the circumstance under which the petitioner was arrested; (iii) the mode of arrest of the petitioner; (iv) the alleged recovery of arms and a pamphlet in an alleged bag; (v) the circumstance under which a fresh case in Crime No.1 of 2003 of CBCID, Chennai, was registered; (vi) the circumstance under which the said crime was altered to POTA Crime No.5 of 2003 of CBCID, Coimbatore, Camp at Chennai; (vii) the circumstance under which fresh recoveries are alleged to have been made in the forest during the police custody after registration of POTA case and (viii) the torture, harassment and human right violations inflicted on the petitioner by the CBCID police officials and the jail authorities."

2. The case of the petitioner, as narrated in his affidavit, is as follows :

"(i) Petitioner is the popular investigative journalist, who has been publishing the Tamil Political bi-weekly Nakkheeran for the past 16 years. Nakkheeran has been boldly exposing the corrupt practices and misdeeds of the Government, the officials and the police authorities.

(ii) Due to impartial unbiased well founded publications, Nakkheeran has become a very widely read magazine. The petitioner

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and his reporters are put to harassment and victimisation by the State authorities, including the police officials. The police authorities have falsely implicated the petitioner and his reporters in various criminal cases.

(iii) Petitioner faces half a dozen murder and abduction cases relating to the notorious forest brigand Veerappan. In some cases, the petitioner already filed writ petitions before this Court, praying for transfer of investigation to the CBI, on the ground of mala fide investigation and they are pending. Now, the petitioner has come before this Court with the similar prayer in the latest case, foisted against him by the CBCID Police Wing of Tamil Nadu.

(iv) The Tamil Nadu Police and the STF, that is the Special Task Force constituted to nab Veerappan by Tamil Nadu and Karnataka Governments, bore animosity against the petitioner, because of his publications in the past, exposing the atrocities of the STF and the police.

(v) During the abduction of Kannada Cine Actor Dr.Rajkumar, the petitioner and his team were requested by the State Government to play a role of State emissary. At that time, Madam Jayalalithaa kept on criticising the petitioner for his being selected as the State emissary. She made press statements, criticising the petitioner. Therefore, the petitioner filed a suit in C.S.No.634 of 2000 on the file of this Court and obtained an interim order.

(vi) On 20.11.2001, one Mr.Sivasubramaniam, Nakkheeran Reporter, was abducted by Karnataka STF and false cases were foisted against him. The said Sivasubramaniam was compelled to give false statements against the petitioner, but he refused. To this effect, he filed an affidavit before this Court and also the Supreme Court.

(vii) Apprehending arrest on false accusation, the petitioner filed an anticipatory bail petition before this High Court in Crime No.90 of 2000 of Thalavadi Police Station, in relation to the abduction of Cine Actor Dr.Rajkumar. Anticipatory bail was granted to him by this Court on 10.12.2001. He was interrogated between 20.06.2002 and 29.06.2002. He was tortured by CBCID officials.

(viii) Two cases were registered against him in Crime No.676 of 1998 of Anthiyur Police Station regarding the murder of Kandavelu and Crime No.1500 of 1998 of B-1 Bazaar Police Station, Coimbatore, regarding the murder of Bakthavatsalam. But, ultimately, a final report was filed as undetected report. Thereafter, on the instructions of the State Government, the cases were reopened. Therefore, he filed two applications for anticipatory bail and the same was granted on 05.03.2003.

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(ix) Against the orders of anticipatory bail in Criminal O.P.Nos.4254 and 4255 of 2003, the CBCID preferred a Special Leave Petition before the Supreme Court, on the ground that the petitioner was wanted for custodial interrogation. However, the Supreme Court declined to stay the order of anticipatory bail and ordered mere notice.

(x) In this background, the Rajamani murder case, registered in Crime No.414 of 2001, was reopened. A statement was obtained from one Sampath Kumar as if the petitioner was abetting Veerappan to commit murder of Rajamani. The said statement was recorded on 10.04.2003. On that basis, the Superintendent of Police instructed the Inspector of Police to arrest the petitioner in Crime No.414 of 2001.

(xi) On 11.04.2003, the petitioner attended his office and left the same in his jeep, proceeding towards his home at about 08.00 p.m. At 08.40 p.m., he was surrounded by the police officers and was immediately taken to the CBCID Headquarters. Documents were prepared as if a search was conducted on him and a country made revolver was seized from him along with a black hand bag, containing pamphlets, supporting some Tamil Secessionist group. When the petitioner was asked for putting his signature, he refused.

(xii) Apart from Crime No.414 of 2001, since a country made pistol, ammunition and pamphlets supporting TNLA, a banned organisation, in a black hand bag were found in the possession of the petitioner, a fresh case was registered against him in Crime No.1 of 2003 of CBCID for the offences under Section 25 (1-B) of Arms Act and Section 124-A of IPC. The grounds of arrest were not all informed to him.

(xiii) The next day i.e., on 12.04.2003, the petitioner was produced before the VI Metropolitan Magistrate, Saidapet, Chennai. He was not allowed to make any complaint before the Magistrate. In the meantime, an alteration report was prepared by DSP, CBCID, invoking the provisions of Section 4 (a) of Prevention of Terrorism Act (POTA) against the petitioner. Consequently, the matter was transferred to the Special Court for POTA at Poonamallee, Chennai.

(xiv) On 17.04.2003, the POTA Special Court remanded the petitioner and passed an order, directing the investigating officer to produce the petitioner before the Court on 21.04.2003. In the meantime, on 17.04.2003, the petitioner was taken from Central Prison, Madras, and produced before the Judicial Magistrate, Sathyamangalam, for the purpose of remand in Crime No.414 of 2001. At that time, the petitioner complained to the Judicial Magistrate, Sathyamangalam, about the mental and physical torture inflicted on him by the CBCID Police.

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(xv) On 21.04.2003, the petitioner was produced before POTA Special Court at Poonamallee. There also, he filed a written complaint, denying the allegations of CBCID.

(xvi) On 22.04.2003, CBCID filed a petition for police custody of the petitioner. Accordingly, in spite of the objection raised by the petitioner, police custody was granted for seven days. During the seven days, he was tortured, taken into the deep jungle under a gun threat. A statement was recorded as if the petitioner was having explosive items in the forest.

(xvii) On 28.04.2003, the petitioner was produced before the POTA Special Court, Poonamallee. At that time also, he filed a written complaint about the torture inflicted on him by the police.

(xviii) Petitioner filed W.P.No.56 of 2003 before the Supreme Court, challenging the provisions of POTA. In the same writ petition, he filed a petition, praying for an interim order for transfer of investigation POTA (FIR) Crime No.5 of 2003 to CBI. He filed another Writ Petition No.106 of 2003 before the Supreme Court, praying for CBI enquiry.

(xix) On 14.08.2003, the Supreme Court heard the matter and observed that such a prayer can be sought before the High Court. Hence, the petitioner withdrew the writ petition.

(xx) In the meantime, on 19.09.2003, this High Court granted bail to the petitioner. But, in the SLP, the Supreme Court set aside the bail order. However, on 19.12.2003, the High Court granted bail to the petitioner in H.C.P. The State preferred an SLP against the said order, but the Supreme Court declined to stay the operation of the said order.

(xxi) Petitioner filed a quash petition to quash the charges against him in Crime No.414 of 2001. Since charge sheet was filed, the trial was stayed.

(xxii) In this case, charge sheet was not filed as per the orders of the Supreme Court. The Central POTA Review Committee is in seisin of the matter.

(xxiii) Petitioner apprehends that the respondent police officials may rush to lay a charge sheet and put him to undue trial. Hence, he has filed this Writ Petition under Article 226 of the Constitution for transfer of investigation to CBI."

3. The Writ Petition was admitted by this Court and notice ordered. After appearance was entered into by the counsel for the respondents, the matter was periodically adjourned for final disposal. At that stage, during the pendency of the writ petition, one another development took place i.e., the respondents filed a petition before this Court on 16.09.2005, seeking for permission to

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file charge sheet against the petitioner in the POTA case, on the ground that already investigation was over and one year period, as contemplated in the Ordinance No.1 of 2004, dated 21.09.2004, which became an Act as Prevention of Terrorism Act,2002, would expire on 20.09.2005.

4. It was brought to the notice of this Court that under sub-section (2) of the Ordinance No.1 of 2004, final report, taking cognizance, shall be filed within a period of one year from the date of commencement of the Ordinance i.e., 21.09.2004.

5. The said move by the State was opposed by Mr.R.Shanmugasundaram, learned Senior Counsel appearing for the petitioner, stating that already the Review Committee had initiated the proceedings and the said proceedings were stayed in the SLP, at the instance of the respondents/State.

6. Then, the learned counsel for the State submitted that the State was prepared to withdraw the petition, challenging the review proceedings, so that there would not be any hurdle for the Review Committee to go on with the case and, in the meantime, the State might be permitted to file charge sheet; for which course, both the parties agreed.

7. Both the parties were directed to file affidavits to that effect and, accordingly, they filed their affidavits. On the basis of the said affidavits, this Court passed an order on 16.09.2005, granting permission to the investigating officer to file charge sheet against the petitioner before the Special Court on or before 20.09.2005; recording the undertaking given by the counsel for the State to take appropriate steps to withdraw the appeal before the Supreme Court, challenging the POTA Review Committee proceedings, and also permitting the petitioner to argue for the main prayer, namely, transfer of investigation to CBI, despite the filing of charge sheet. Thereupon, it was reported to this Court that charge sheet was filed and the same was taken on file for the offence under Section 4 (b) of Prevention of Terrorism Act and that the Criminal Appeal No.1224 of 2004, which was filed before the Court by the State against the Review Committee proceedings, has also been withdrawn, to enable the Committee to review the case of the petitioner, after hearing the case of the prosecution.

8. In the above factual situation, the matter has come up for final disposal before this Court.

9. We have heard Mr.R.Shanmugasundaram, learned Senior Counsel for the petitioner, and Mr.A.L.Somayaji, learned Additional Advocate General, representing the State.

10. Learned counsel for the for the petitioner would point out various irregularities committed by the investigating agency, in order to establish that the investigation is mala fide and, as such, the case has to be transferred to CBI.

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11. Refuting the allegations made by the learned counsel for the petitioner, Mr.A.L.Somayaji, learned Additional Advocate General, would submit that the investigation is bona fide and, after collecting the materials, the investigating officer has placed the entire records before the Special Court, which took cognizance of the matter and, as such, a fresh investigation by the CBI is not warranted.

12. Before dealing with various points raised by the learned counsel for the parties, it would be appropriate to refer to the decisions rendered by the Supreme Court, giving guidelines, for transferring investigation to CBI.

13. On behalf of the petitioner, the following decisions are cited :

(i) 1988 SUPREME COURT CASES (CRI.) 864 (Kashmeri Devi v. Delhi Administration and another) :

> "6.....Prima facie, the police has acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are therefore of the opinion that in the interest of justice it is necessary to get a fresh investigation made through an independent authority so that truth may be known."

(ii) 1992 (2) SUPREME COURT CASES 397 (Gudalure M.J.Cherian and Others v. Union of India) :

> "7..... The investigation having been completed by the police and charge-sheet submitted to the Court, it is not for this Court, ordinarily, to reopen the investigation specially by entrusting the same to a specialised agency like CBI. We are also conscious that of late the demand for CBI investigation even in police cases is on the increase. Nevertheless – in a given situation, to do justice to the parties and to instil confidence in the public mind – it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency."

(iii) AIR 1994 SUPREME COURT 38 (R.S.Sodhi v. State of U.P.) :

> "2.... We think that since the accusations are directed against the local police personnel, it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all

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concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility."

(iv) 2002 (4) SUPREME 91 (Secretary, Minor Irrigation & Rural Engg.Services, U.P. & Ors. v. Sahngoo Ram Arya & Anr.) :

"6..... Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of 'ifs' and 'buts' and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law...."

14. On behalf of the respondents, the following decisions are cited :

(i) 1985 (1) SUPREME COURT CASES 317 (State of West Bengal and Others v. Sampat Lal and Others) :

"26.....The Court has to be alive to the fact that the scheme of the law is that the investigation has been entrusted to the police and it is ordinarily not subject to the normal supervisory power of the Court. We are inclined, on the facts of the case as placed before us, to take the view that the materials placed before the Court did not justify an exception to be made to the rule indicated by this Court and the appointment of a Special Officer was not called for at this stage."

(ii) AIR 1991 SUPREME COURT 1260 (State of Bihar and another v. Shri P.P.Sharma and another) :

"50....The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and

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conditions of a valid exercise of administrative power.

51.The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

55.....Moreover, the Investigating Officer would be available to cross-examination at the trial of the case and it would be open to the accused to elicit from the Investigating Officer necessary circumstances or grounds to throw doubt on the impartiality of the Investigating Officer and must establish its effect on the prosecution evidence adduced at the trial. It is for the Court to consider how far it has affected materially the result of the trial. The evidence collected during investigation would be subject to proof as per Evidence Act and tested by cross-examination. The reasoning of the Courts below that if an authority does not act impartially or in good faith then a reasonable mind can definitely infer the bias for reason best known to the authorities is too wide a statement of law in the context of police/Investigating Officer.

57.....The omission to investigate into those aspects, by no stretch of imagination, would be inferred to be a mala fide act. It may be a bona fide opinion.... Before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the Court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the Court."

(iii) AIR 1997 SUPREME COURT 93 (Central Bureau of Investigation and another v. Rajesh Gandhi and another) :

"8.... The decision to investigate or the decision on the agency which should investigate

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does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with....."

(iv) 2001 (10) SUPREME COURT CASES 759 (Rajesh and Others v. Ramdeo and Others) :

"2.... The High Court has taken an unusual step of forming a panel and directing them to examine the matter, and on the basis of the said panel report, the High Court has directed a further investigation by an agency other than the local police to be headed by the Superintendent of Police. Since the investigation agency has already filed the charge-sheet on the basis of which the accused persons are being proceeded against, if any further materials are available, the Court may alter the charge framed. In the circumstances, we have no hesitation to come to the conclusion that the High Court has overstepped its jurisdiction in issuing the impugned direction calling upon further investigation into the matter, which in our considered opinion, would be an abuse of the process of the court...."

(v) 2004 (8) SUPREME COURT CASES 788 (M.P.Special Police Establishment v. State of M.P.and others) :

"25....in the absence of any material brought on record, it may not be possible to hold that the action on the part of the Council of Ministers was actuated by any malice. So far as the plea of malice is concerned, the same must be attributed personally against the person concerned and not collectively. Even in such a case the persons against whom malice on fact is alleged must be impleaded as parties."

15. The principles laid down by the Supreme Court for transferring investigation to CBI, as laid down by the Supreme Court, in gist, are given below :

(1) The decision to direct an inquiry by the CBI against a person can only be taken if the High Court, after considering the material on record, comes to a conclusion that such material discloses a prima facie case calling for an investigation by the CBI and the same cannot be done as a matter of routine or merely because a party makes some allegations.

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(2) The investigation having been completed by the police and charge-sheet submitted before the Court, it is not for the Court, ordinarily, to reinvestigate the matter, especially by entrusting the same to a specialised agency like CBI.

(3) The decision to investigate or the decision on the agency which should investigate does not attract the principles of natural justice. The accused cannot have a say as to who should investigate into the offences, with which he is charged.

(4) The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

(5) The action taken by the police must be proved to have been made mala fide for some considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case, to prove mala fide.

(6) By no stretch of imagination, the mere fact that the investigating agency omitted to investigate into some aspects would be inferred to be a mala fide act. It may be a bona fide opinion. Before countenancing such allegations of mala fides, it is the responsibility of the Court not only to insist upon making specific and definite allegations of personal animosity against the investigating officer on the side of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the Court.

(7) So far as the plea of malice is concerned, the same must be attributed personally against the person concerned and not collectively. Even in such a case, the persons, against whom malice on fact is alleged, must be impleaded as parties.

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16. In the light of the above guidelines laid down by the Supreme Court, let us now deal with the points raised by the learned Senior Counsel appearing for the petitioner, seeking for transferring the investigation to CBI, one by one :

POINT No.1 :

(i) The petitioner has been boldly exposing the corrupt practices and the misdeeds of the police officials and the Government, through his journal 'Nakkeeran'. Therefore, three false cases were foisted against him. They are : (i) murder of Kandavelu by the forest brigand Veerappan, at the instigation of the petitioner, in Crime No.676 of 1998 on the file of Anthiyur Police Station; (ii) murder of Bakthavatchalam by Veerappan, at the instigation of the petitioner, in Crime No.1500 of 1998 on the file of B-1 Bazaar Police Station, Coimbatore; and (iii) abduction of Kannada Cine Actor Dr.Rajkumar by Veerappan, assisted by the petitioner, in Crime No.90 of 2000 on the file of Thalavady Police Station.

(ii) In all the above cases, the petitioner obtained anticipatory bail. Though the State preferred SLP to stay the said anticipatory bail orders, the Supreme Court declined to grant stay. Therefore, in order to arrest the petitioner somehow or other in some case or other, Rajamani murder case, registered in Crime No.414 of 2001, which was closed earlier, was reopened and the petitioner was implicated in that case, on the strength of a statement, stated to have been given by one Sampath Kumar @ Manickkam on 10.04.2003. On that basis, the petitioner was arrested on 11.04.2003 in that case. The statement made by the police in the counter that a statement has been obtained from Sampath implicating the petitioner on 10.04.2003 is false. The 161 Cr.P.C.Statement would show that it was recorded on 13.04.2003 and the same reached the Court on 16.04.2003. So, the arrest was made even before the alleged statement was recorded.

(iii) Mr.R.Shanmugasundaram, learned Senior Counsel for the petitioner, while elaborating this point, would submit that the action of the police in arresting the petitioner on 11.04.2003 in Crime No.414 of 2001, which was closed earlier, after having failed to get the stay order in the Supreme Court as against the anticipatory bail orders of this High Court, is not a bona fide one, since the statement, implicating the petitioner, was recorded from Sampath Kumar only on 13.04.2003, as per the records.

(iv) While refuting the said allegation, Mr.A.L.Somayaji, learned Additional Advocate General, would submit that the statement of Sampath was actually recorded on 10.04.2003 in Hassanur Police Station in Crime No.22 of 2002 by one Mr.Munirathinam, Inspector of Police, Sathyamangalam, who was holding additional charge of Hassanur Police Station, and, on the orders of the Judicial Magistrate, Sathyamangalam, on 10.04.2003, police custody was obtained and, on the very same day, the statement was recorded. The document referred to by the petitioner is the 161 Cr.P.C.Statement

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of Sampath, recorded in Crime No.414 of 2001 on 13.04.2003, and only on the basis of the statement in Crime No.22 of 2002 recorded on 10.04.2003, Crime No.414 of 2001 was reopened and a separate statement was recorded in Crime No.414 of 2001 on 13.04.2003 and, therefore, the contention of the petitioner that he was arrested without any statement of Sampath is not correct.

POINT No.2 :

(i) Petitioner was not informed of the grounds of arrest. The Inspector of Police, Munirathinam, who was the Investigating Officer in Crime No.414 of 2001, in which the petitioner was arrested, did not make arrest, but it was some other officer by name Mr.C.Kanagaraj, Inspector of Police, that arrested the petitioner. There is no proper reason for the change of officer and, during the search, Section 100 Cr.P.C. has not been followed.

(ii) The reply given by the State is as follows :

"(a) Mr.C.Kanagaraj, Inspector of Police, was deputed to arrest the petitioner as per the orders of the Superintendent of Police, CBCID, as Mr.Munirathinam, Inspector of Police, was not available at Chennai on 11.04.2003.

(b) Petitioner was arrested on 11.04.2003 near his office and he was brought to CBCID Headquarters and a search was conducted in the presence of two responsible witnesses. The petitioner was informed of the grounds of arrest and there was no irregularity.

(c) Telegrams, intimating arrest, were sent to petitioner's father, wife, manager and advocate. Thereafter, the petitioner was produced before the VI Metropolitan Magistrate on 12.04.2003 and he never made any complaints against the police."

POINT No.3 :

(i) Petitioner was implicated in various cases. There is no material as against him. Therefore, in all those cases, he was granted anticipatory bail by this High Court and bail by the Sessions Court. As the Hon'ble Supreme Court declined to grant stay of all the orders of bail, the respondent police wantonly reopened the case in Crime No.414 of 2001 (Rajamani murder case) and purposely arrested the petitioner with oblique motive.

(ii) The following is the reply given by the State for this point :

"(a) Petitioner involved in six criminal cases. They are : (i) Crime No.676 of 1998, Anthiyur Police Station – Kandavelu murder case; (ii) Crime No.1500 of 1998, B-1 Bazaar Police Station, Coimbatore – Bakthavatsalam murder case; (iii) Crime No.227 of 1998, Sathyamangalam Police Station – Professor Krishnasamy Nettrikkan Reporter's abduction case; (iv) Crime No.414 of 2001, Sathyamangalam Police Station – Rajamani murder case ; (v) Crime No.90 of 2000, Thalavady Police Station – Dr.Rajkumar abduction case and (vi) Crime No.1 of 2003, registered under the Arms Act, which, ultimately, resulted in registration of Crime No.5 of 2003 on the file of CBCID,

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under POTA. The statements available in all these cases would clearly indicate the involvement of the petitioner in the said cases.

(b) When Veerappan abducted the Cine Actor Dr.Rajkumar, he made several unreasonable demands. One of the victims, namely, Abdul Kareem moved the Supreme Court, restraining the Government of Karnataka from succumbing to the illegal demands of Veerappan. Accordingly, the Supreme Court set aside the orders passed by the Special Court for TADA, permitting the prosecution to withdraw the complaints and directing the State to take appropriate action as against Veerappan and others. As such, the cases, which required further investigation, were reopened. Kandavelu murder case in Crime No.676 of 1998 on the file of Anthiyur Police Station is pending trial before the Fast Track Court, Gobichettipalayam. Bakthavatchalam murder case in Crime No.1500 of 1998 on the file of B-1 Bazaar Police Station, Coimbatore, is pending trial before the Principal Sessions Judge, Coimbatore. The petitioner was arrested in Rajamani murder case in Crime No.414 of 2001 on 11.04.2003. When he was in police custody, arms were recovered and, consequently, Crime No.1 of 2003 was registered under POTA. Therefore, it cannot be said that there is no material as against the petitioner and he is arrested in a false case."

Point No.4 :

(i) In the election manifesto, the Chief Minister Jayalalithaa had announced that she would take steps to arrest the petitioner in Dr.Rajkumar's abduction case, as she bore animosity against the petitioner, due to his writing against her in his journal. The reopening of the cases, which were closed earlier, and putting up a new case falsely against him are at the instance of Jayalalithaa, the Chief Minister.

(ii) Reply by the State is as follows :

"(a) Action sought to be taken by the Government as against the forest brigand Veerappan, who committed heinous crimes and was absconding for long number of years, would be the collective decision, proposed to be made by the Cabinet, to fulfil the wishes of the people. The announcement that her Government would take steps to take action against the forest brigand Veerappan and his associates would not be a ground to hold that there is a mala fide investigation at the instance of Jayalalithaa.

(b) Even according to the petitioner, due to the mala fides of the Tamil Nadu Police officials, irrespective of whichever party was in power, the case relating to the forest bringand Veerappan was reopened, with a view to implicate him. When such is the statement, the petitioner cannot accuse the present Chief Minister Jayalalithaa, that she alone was responsible for the mala fide investigation, especially when she is not made a party in this Writ Petition."

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POINT No.5 :

(i) Notification issued under Section 4 (a) of POTA was struck down by this High Court. When the matter was argued before this High Court, it was not brought to the notice that the case under Section 4 (b) of the Act was registered. After Section 4 (a) was struck down, charge sheet has been filed under Section 4 (b) of the Act, to bring the case under POTA.

(ii) Reply by the State for this point is as under :

"(a) According to the prosecution, when the petitioner was arrested on 11.04.2003, he was found in unauthorised possession of arms and ammunition.

(b) It is true that notification under Section 4 (a) of POTA has been quashed by this Court. There was no necessity for the investigating agency to inform this Court that a case under Section 4 (b) also was registered, since Section 4 (b) does not require notification. This Court was only concerned with the notification under Section 4 (a). Even before the disposal of the writ petition, requisition was sent for obtaining sanction not only for 4 (a) but also for 4 (b) and sanction was granted for the same on 07.10.2003 itself."

17. We have carefully considered all the points raised as well as the reply given by the counsel for the parties.

18. While discussing these points, we have to remind ourselves about our power to transfer the investigation, on the ground of mala fides.

19. The Supreme Court, in State of Haryana v. Bhajan Lal, 1992 CRI.L.J.527, would caution the Courts in the matter of interfering with the investigation for the purpose of transferring the same to some other agency. The investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised. The Courts are not justified in obliterating the track of investigation, when the investigating agencies are well within their legal bounds. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Court is kept in the picture at all stages of the police investigation but it is not authorised to interfere with the actual investigation or to direct the police how the investigation is to be conducted.

20. It is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them a duty of enquiry. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, of course,

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subject to the right of the Court to intervene in an appropriate case.

21. In other words, if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons, since human dignity is a dear value of our Constitution.

22. Justice Bhagwathi, CJ, in Sheonandan Paswan v. State of Bhiar, 1987 CRI. L.J. 793, on behalf of the Supreme Court, would make the following observation :

> " It is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta."

23. But, however, the authorities referred to above on various occasions would uniformly hold that if the High Court, after considering the material on record, comes to the conclusion that there are materials which disclose a prima facie case calling for investigation by the independent agency like CBI, it can order for the same, only if it is established that the action by the police has been taken mala fide for some considerations or by fraud or colourable exercise of power. In other words, the action taken by the investigating agency must be demonstrably proved to have been made mala fide for such consideration or fraud. Mere assertion or a vague or bald statement is not sufficient.

24. If the above principles are applied to the facts of the present case, we do not think that the action of the respondents has been demonstrably proved to be mala fide.

25. In regard to the first point, namely, the statement of Sampath Kumar, implicating the petitioner, was recorded only on 13.04.2003 and the petitioner was arrested on 11.04.2003 as if the police obtained a statement from the said Sampath on 10.04.2003, if we go through the written submissions and the reply filed by the respondents, it is noticed that a stand has been taken by the respondents that the said statement was recorded from Sampath Kumar, implicating the petitioner, on 10.04.2003 and they can prove the same, by producing the relevant records before the Court. Thus, it has become a question of fact.

26. In regard to the second point, namely, the arrest of the petitioner by one C.Kanagaraj, Inspector of Police, who is not the investigating officer in Crime No.414 of 2001, it is contended

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by the learned Additional Advocate General for the respondents that the Superintendent of Police, CBCID, directed the said Kanagaraj to arrest the petitioner, by issuing a written order, dated 10.04.2003, as Munirathinam, the investigating officer, was not available at that time and, consequently, the petitioner was arrested by the said Kanagaraj and a search was conducted by the CBCID.

27. In view of the said reply, we are not able to hold that the officer, who arrested the petitioner, is not a competent officer and the procedures contemplated in Cr.P.C. have not been followed.

28. In regard to the third point, namely, there is no material as against the petitioner in all the cases, in which he is made an accused, it is strenuously contended by the learned Additional Advocate General that the materials have been collected in all the cases against the petitioner and charge sheets filed in all those cases.

29. Such being the case, it would not be appropriate for this Court to hold that there is no material against the petitioner in all those cases, merely because he obtained anticipatory bail and bail in the said cases.

30. In regard to the next point, namely, false cases have been foisted against the petitioner at the instance of Jayalalithaa, Chief Minister, this Court would not accept the same, merely on the basis of allegation through the affidavit, making personal accusation against Jayalalithaa, Chief Minister, even without impleading her as one of the parties in the Writ Petition.

31. In addition, it has to be pointed that counter has been filed by the respondents, police agency, that the cases against the petitioner have been reopened only on the basis of the material available against him and also on the basis of recovery of arms and ammunition from him, in pursuance of his confession.

32. In regard to the fifth point, it is contended by the learned Senior Counsel for the petitioner that the notification issued under Section 4 (a) of POTA was sought to be quashed in the Writ Petition and the same was quashed by this High Court and the registration of case under Section 4 (b) was not brought to the notice of the Court.

33. In reply, it is pointed out by the learned Additional Advocate General that the notification sought to be quashed was not with reference to Section 4 (b) and it was only with reference to Section 4 (a). Moreover, in respect of Section 4 (b) of the Act, sanction has been obtained from the competent authority as early as on 07.10.2003.

34. In the light of the above reply, we cannot conclude that there was any misrepresentation before this High Court, in

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which Section 4 (a) notification was the subject matter of the Writ Petition.

35. In this context, one more aspect that could be noticed is that the prayer made in this Writ Petition is for a mandamus, directing the first respondent, namely, State, to transfer the investigation of POTA in Crime No.5 of 2003, since the investigation done by CBCID would suffer from mala fides. Strangely, the prayer does not end with that. In the very same prayer, the petitioner seeks for a direction to CBI to investigate into the circumstances under which a fresh case in Crime No.414 of 2001 was registered against him; under what circumstances, he was arrested and how he was arrested; under what circumstances, a fresh case was registered in Crime No.1 of 2003; under what circumstances, the said crime was altered into POTA Crime No.5 of 2003; under what circumstances, fresh recoveries were alleged to have been made in the forest and also under what circumstances, he was tortured and harassed by the CBCID Police.

36. Thus, it is clear that the petitioner seeks not only for transfer of investigation to CBI, but also wants a direction from this Court to CBI as to how it has to investigate and what are the aspects to be investigated into and how the earlier cases have been foisted against him. This comprehensive prayer, in our view, is beyond the scope of this Writ Petition, as the Supreme Court would categorically hold in State of Haryana v. Bhajan Lal, 1992 CRI.L.J.527, that this Court cannot direct the police as to how the investigation has to be conducted. In short, as indicated above, none of the points raised by the learned Senior Counsel for the petitioner, in our view, would be sufficient to hold that there is a prima facie case for transfer of investigation to CBI.

37. Further, the proceedings before the POTA Review Committee have to be commenced and the trial would be only subject to the decision taken by the Review Committee. If the Review Committee ultimately comes to the conclusion that there are materials for trial of the case, then, the trial shall go on; in which event, it would be open to the petitioner to crossexamine the Investigating Officer and elicit from the Investigating Officer the necessary circumstances or grounds to throw doubt on the impartiality of the Investigating Officer. If such a thing is established, naturally, the trial Court may consider those things, in order to find out whether the investigation and the evidence collected in the said investigation by the investigating agency would suffer from mala fides and the said investigation would affect materially the result of the trial.

38. Therefore, we do not find any ground to order fresh investigation by the Central Bureau of Investigation. To make it clear, we have not given any finding with reference to the various grounds, raised by the learned Senior Counsel for the petitioner, seeking for transfer of the investigation. Therefore, the trial Court, subject to the orders of the Review Committee, can allow both

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the parties to adduce their evidence to establish their respective pleas; in which event, the trial Court may consider those material placed before it and decide the case, uninfluenced by any of the observations made by this Court in this order.

39. Writ Petition is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit

To

1.The Home Secretary to Government,
State of Tamil Nadu,
Fort St.George,
Chennai.

2.The Inspector of Police,
Sathyamangalam Police Station,
Erode,
Tamil Nadu.

3.The Inspector of Police,
Special Investigation Cell,
CBCID Hqrs., Govt.Estates,
Chennai - 600 002.

4.The Dy.Superintendent of Police,
Special Investigation Cell,
CBCID,
Coimbatore (Camp at Chennai).

5.The Regional Director,
CBI,
Shastri Bhavan,
Chennai.

1 cc to Mr.P.T. Perumal, Advocate, Sr. 18438
1 cc to Mr.C. Manishankar, Spl. Public Prosecutor, Sr. 18565

W.P.No.25138 OF 2004

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